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SUPREME COURT, U. S.

No. 708

In the Supreme Court of the United States

October Term, 1950

VAUGHN L. TOWNSEND, PETITIONER

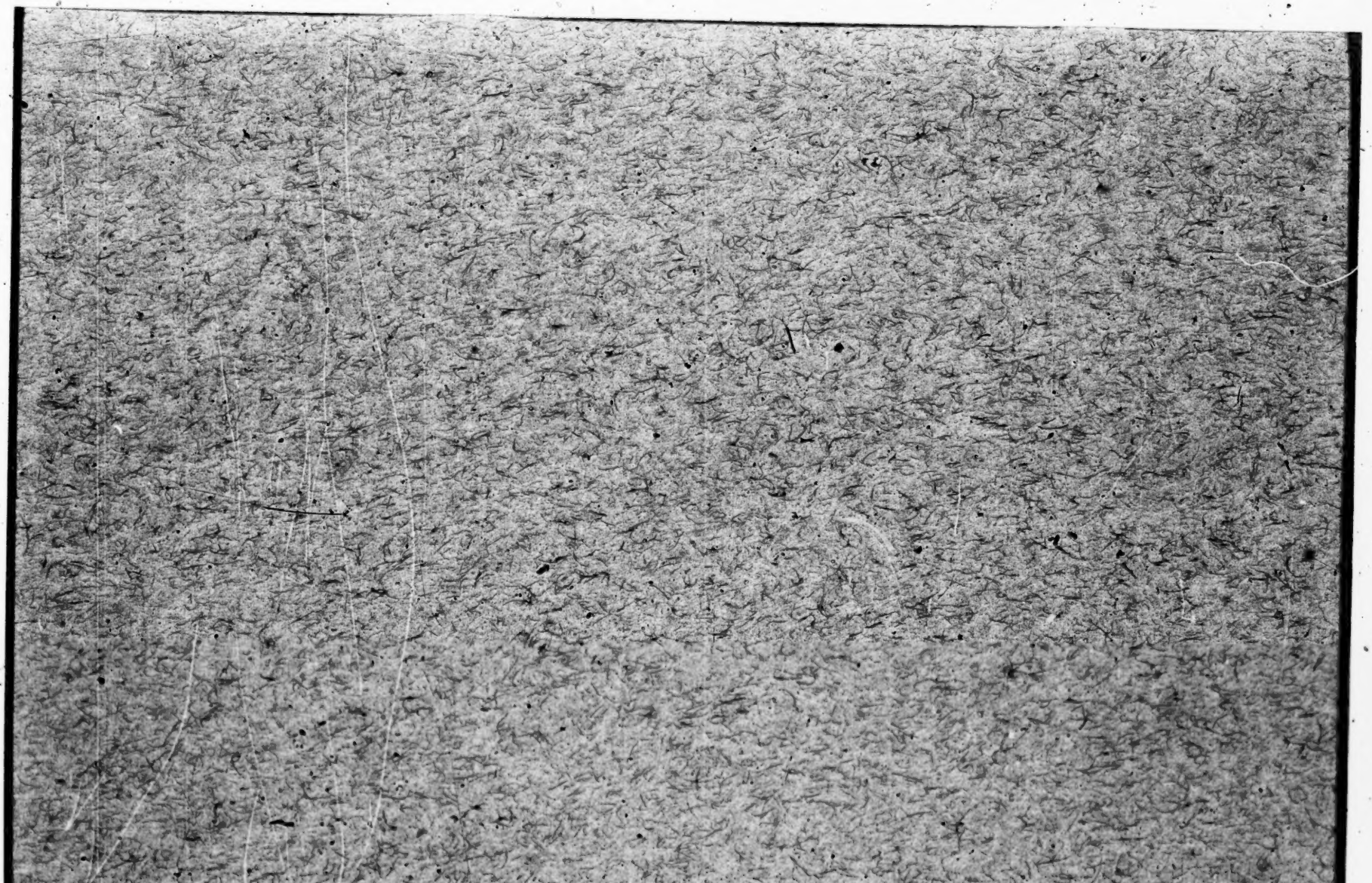
v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

PHILIP B. PERLMAN,
Solicitor General,
JAMES M. MCINERNEY,
Assistant Attorney General,
JOSEPH M. HOWARD,
RICHARD H. WILKINSON,
Attorneys,
Department of Justice,
Washington, D.C.



In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 708

VAUGHN L. TOWNSEND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This is a pre-trial proceeding involving a claim by petitioner that certain evidence turned over by him to Treasury agents investigating his income tax liability should be suppressed because he was not advised of his constitutional rights.[1]

[1] Petitioner was originally indicted in 1965 for violations of Sections 7201 and 7206 of the Internal Revenue Code (App. 1). ("App." refers to the Appendix filed by the government in the court of appeals.) At that time he filed a motion to suppress certain partnership records, and all oral statements and formal question-and-answer transcripts given by petitioner and his partners. This motion was denied in 1966, except as to the question-and-answer statements, which were ordered suppressed (App. 3). That ruling is not in question here. In 1966, the first indictment was dismissed on the government's motion

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On November 7, 1969, after an evidentiary hearing the district court, relying on *United States* v. *Dickerson*, 413 F. 2d 1111 (C.A. 7), ordered suppression on the ground that the Treasury agents had not advised petitioner of his constitutional rights (Pet. App. A3–A21). The government appealed to the Seventh Circuit, pointing out that the new rule enunciated in *Dickerson* expressly applied only to cases where evidence was given to Treasury agents after the date of the decision, July 28, 1969, and therefore did not apply to petitioner's claim. The court of appeals reversed (Pet. App. A27).

Whatever the soundness of the *Dickerson* decision on the merits,[2] the court correctly resolved the retroactivity issue there, 413 F. 2d at 1117, and in this case. The evidence sought to be suppressed can

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because it had been based partly on the suppressed question-and-answer statements, and a superseding indictment was filed (App. 15–18). Petitioner renewed his motion to suppress oral statements and partnership records (App. 19), alleging that petitioner "was not advised of his constitutional rights and was not advised that this was a criminal investigation" (App. 26–27).

[2] All courts of appeals, except the Seventh Circuit, hold that since the taxpayer is not in custody or deprived of his freedom in any significant way the requirements of *Miranda* do not apply. *Morgan* v. *United States*, 377 F. 2d 507, 508 (C.A. 1); *United States* v. *White*, 417 F. 2d 89 (C.A. 2), certiorari denied, 397 U.S. 912; *United States* v. *Jaskiewicz* (No. 18,387, C.A. 3), decided September 28, 1970; *United States* v. *Mancuso*, 378 F. 2d 612, 619 (C.A. 4), certiorari denied, 390 U.S. 955; *Agorianos* v. *United States*, 409 F. 2d 833, 835 (C.A. 5), certiorari denied, 396 U.S. 824; *United States* v. *Miriani*, 422 F. 2d 150, 153–154 (C.A. 6), certiorari denied, 399 U.S. 910; *Cohen* v. *United States*, 405 F. 2d 34 (C.A. 8), certiorari denied, 394 U.S. 943; *Feichtmeir* v. *United States*, 389 F. 2d 498 (C.A. 9); *Hensley* v. *United States*, 406 F. 2d 481, 484 (C.A. 10).

scarcely be characterized as unreliable, especially since it was given in a non-custodial setting. When one adds the probable disruption to the criminal process in light of the fact that income tax evasion cases often come to trial long after commission of the offense and initial investigation, and the fact that even after *Miranda* Treasury agents could hardly have expected the warnings to be required in non-custodial situations, there can be no doubt that the court, in determining when the new rule should be deemed controlling, exercised its "large measure of judicial discretion," *Jenkins* v. *Delaware*, 395 U.S. 213, 218, in a sensible manner. See *Desist* v. *United States*, 394 U.S. 244, 249–254.

Since the records and statements here were given long before July 28, 1969, the date of decision in *Dickerson*, the court of appeals properly rejected petitioner's reliance on that decision as a basis for suppressing this evidence.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
JOHNNIE M. WALTERS,
Assistant Attorney General,
JOSEPH M. HOWARD,
RICHARD B. BUHRMAN,
Attorneys.

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[3] The evidence was obtained between July 1961 and February 15, 1962. (Pet. App. A18).

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